

UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

RONDELL DONTA BULLARD,

Plaintiff,

v.

SACRAMENTO POLICE  
DEPARTMENT,

Defendant.

No. 2:22-cv-1914 KJN P

ORDER

Plaintiff is a county jail inmate, proceeding pro se. Plaintiff seeks relief pursuant to 42 U.S.C. § 1983, and requested leave to proceed in forma pauperis pursuant to 28 U.S.C. § 1915. This proceeding was referred to this court by Local Rule 302 pursuant to 28 U.S.C. § 636(b)(1).

Plaintiff submitted a declaration that makes the showing required by 28 U.S.C. § 1915(a). Accordingly, the request to proceed in forma pauperis is granted.

Plaintiff is required to pay the statutory filing fee of \$350.00 for this action. 28 U.S.C. §§ 1914(a), 1915(b)(1). By this order, plaintiff is assessed an initial partial filing fee in accordance with the provisions of 28 U.S.C. § 1915(b)(1). By separate order, the court will direct the appropriate agency to collect the initial partial filing fee from plaintiff's trust account and forward it to the Clerk of the Court. Thereafter, plaintiff is obligated to make monthly payments of twenty percent of the preceding month's income credited to plaintiff's trust account. These

1 payments will be forwarded by the appropriate agency to the Clerk of the Court each time the  
 2 amount in plaintiff's account exceeds \$10.00, until the filing fee is paid in full. 28 U.S.C.  
 3 § 1915(b)(2).

4 As discussed below, plaintiff's complaint is dismissed with leave to amend.

#### 5 Screening Standards

6 The court is required to screen complaints brought by prisoners seeking relief against a  
 7 governmental entity or officer or employee of a governmental entity. 28 U.S.C. § 1915A(a). The  
 8 court must dismiss a complaint or portion thereof if the prisoner raised claims that are legally  
 9 "frivolous or malicious," that fail to state a claim upon which relief may be granted, or that seek  
 10 monetary relief from a defendant who is immune from such relief. 28 U.S.C. § 1915A(b)(1), (2).

11 A claim is legally frivolous when it lacks an arguable basis either in law or in fact.  
 12 Neitzke v. Williams, 490 U.S. 319, 325 (1989); Franklin v. Murphy, 745 F.2d 1221, 1227-28 (9th  
 13 Cir. 1984). The court may, therefore, dismiss a claim as frivolous when it is based on an  
 14 indisputably meritless legal theory or where the factual contentions are clearly baseless. Neitzke,  
 15 490 U.S. at 327. The critical inquiry is whether a constitutional claim, however inartfully  
 16 pleaded, has an arguable legal and factual basis. See Jackson v. Arizona, 885 F.2d 639, 640 (9th  
 17 Cir. 1989), superseded by statute as stated in Lopez v. Smith, 203 F.3d 1122, 1130-31 (9th Cir.  
 18 2000) ("[A] judge may dismiss [in forma pauperis] claims which are based on indisputably  
 19 meritless legal theories or whose factual contentions are clearly baseless."); Franklin, 745 F.2d at  
 20 1227.

21 Rule 8(a)(2) of the Federal Rules of Civil Procedure "requires only 'a short and plain  
 22 statement of the claim showing that the pleader is entitled to relief,' in order to 'give the  
 23 defendant fair notice of what the . . . claim is and the grounds upon which it rests.'" Bell Atlantic  
 24 Corp. v. Twombly, 550 U.S. 544, 555 (2007) (quoting Conley v. Gibson, 355 U.S. 41, 47 (1957)).  
 25 In order to survive dismissal for failure to state a claim, a complaint must contain more than "a  
 26 formulaic recitation of the elements of a cause of action;" it must contain factual allegations  
 27 sufficient "to raise a right to relief above the speculative level." Bell Atlantic, 550 U.S. at 555.  
 28 However, "[s]pecific facts are not necessary; the statement [of facts] need only 'give the

defendant fair notice of what the . . . claim is and the grounds upon which it rests.” Erickson v. Pardus, 551 U.S. 89, 93 (2007) (quoting Bell Atlantic, 550 U.S. at 555, citations and internal quotations marks omitted). In reviewing a complaint under this standard, the court must accept as true the allegations of the complaint in question, Erickson, 551 U.S. at 93, and construe the pleading in the light most favorable to the plaintiff. Scheuer v. Rhodes, 416 U.S. 232, 236 (1974), overruled on other grounds, Davis v. Scherer, 468 U.S. 183 (1984).

#### Plaintiff’s Complaint

Plaintiff claims “threat to safety” and “excessive force” by defendant Sacramento Police Department because he was left by the side of the road rather than being taken to the hospital and placed on a 5150 hold. At some point a second police officer came, and plaintiff states he did not get help, but was treated like a suspect. Plaintiff seeks money damages.

#### Governing Standards

Pre-trial detainees possess personal security interests that are protected by the Fourteenth Amendment. See Castro v. County of L.A., 833 F.3d 1060, 1069-71 (9th Cir. 2016) (en banc). In order to recover for injuries suffered while in custody, a pre-trial detainee “must show that the prison official acted with ‘deliberate indifference.’ ” Castro, 833 F.3d at 1067-68.

The elements of a Fourteenth Amendment claim for failure to protect and excessive force by a pre-trial detainee are: “(1) The defendant made an intentional decision with respect to the conditions under which the plaintiff was confined; (2) Those conditions put the plaintiff at substantial risk of suffering serious harm; (3) The defendant did not take reasonable available measures to abate that risk, even though a reasonable officer in the circumstances would have appreciated the high degree of risk involved -- making the consequences of the defendant’s conduct obvious; and (4) By not taking such measures, the defendant caused the plaintiff’s injuries.” Castro, 833 F.3d at 1071. “With respect to the third element, the defendant’s conduct must be objectively unreasonable, a test that will necessarily ‘turn on the facts and circumstances of each particular case.’ ” Id. (quoting Kingsley v. Hendrickson, 135 S. Ct. 2466, 2473 (2015)). The third element is “more than negligence but less than subjective intent -- something akin to reckless disregard.” Castro, 833 F.3d at 1071.

1 Discussion

2 The court finds the allegations in plaintiff's complaint so vague and conclusory that it is  
3 unable to determine whether the current action is legally frivolous or fails to state a claim for  
4 relief. Plaintiff includes no facts demonstrating that a police officer used excessive force on  
5 plaintiff. Plaintiff names no individual police officer as a defendant.

6 The court determines that the complaint does not contain a short and plain statement as  
7 required by Fed. R. Civ. P. 8(a)(2). Although the Federal Rules adopt a flexible pleading policy,  
8 a complaint must give fair notice and state the elements of the claim plainly and succinctly. Jones  
9 v. Cmty. Redev. Agency, 733 F.2d 646, 649 (9th Cir. 1984). Plaintiff must allege with at least  
10 some degree of particularity overt acts which defendants engaged in that support plaintiff's claim.  
11 Id. Because plaintiff failed to comply with the requirements of Fed. R. Civ. P. 8(a)(2), the  
12 complaint must be dismissed. The court, however, grants leave to file an amended complaint.

13 If plaintiff chooses to amend the complaint, plaintiff must demonstrate how the conditions  
14 about which he complains resulted in a deprivation of plaintiff's constitutional rights. See, e.g.,  
15 West v. Atkins, 487 U.S. 42, 48 (1988). Also, the complaint must allege in specific terms how  
16 each named defendant is involved. Rizzo v. Goode, 423 U.S. 362, 371 (1976). There can be no  
17 liability under 42 U.S.C. § 1983 unless there is some affirmative link or connection between a  
18 defendant's actions and the claimed deprivation. Rizzo, 423 U.S. at 371; May v. Enomoto, 633  
19 F.2d 164, 167 (9th Cir. 1980). Furthermore, vague and conclusory allegations of official  
20 participation in civil rights violations are not sufficient. Ivey v. Bd. of Regents, 673 F.2d 266,  
21 268 (9th Cir. 1982).

22 In addition, plaintiff is informed that the court cannot refer to a prior pleading in order to  
23 make plaintiff's amended complaint complete. Local Rule 220 requires that an amended  
24 complaint be complete in itself without reference to any prior pleading. This requirement exists  
25 because, as a general rule, an amended complaint supersedes the original complaint. See Ramirez  
26 v. County of San Bernardino, 806 F.3d 1002, 1008 (9th Cir. 2015) ("an 'amended complaint  
27 supersedes the original, the latter being treated thereafter as non-existent.'" (internal citation  
28 omitted)). Once plaintiff files an amended complaint, the original pleading no longer serves any

function in the case. Therefore, in an amended complaint, as in an original complaint, each claim and the involvement of each defendant must be sufficiently alleged.

In accordance with the above, IT IS HEREBY ORDERED that:

1. Plaintiff's request for leave to proceed in forma pauperis is granted.

2. Plaintiff is obligated to pay the statutory filing fee of \$350.00 for this action. Plaintiff is assessed an initial partial filing fee in accordance with the provisions of 28 U.S.C. § 1915(b)(1). All fees shall be collected and paid in accordance with this court's order to the Sacramento County Sheriff filed concurrently herewith.

3. Plaintiff's complaint is dismissed.

4. Within thirty days from the date of this order, plaintiff shall complete the attached Notice of Amendment and submit the following documents to the court:


a. The completed Notice of Amendment; and

b. An original of the Amended Complaint.

Plaintiff's amended complaint shall comply with the requirements of the Civil Rights Act, the Federal Rules of Civil Procedure, and the Local Rules of Practice. The amended complaint must also bear the docket number assigned to this case and must be labeled "Amended Complaint."

Failure to file an amended complaint in accordance with this order may result in the dismissal of this action.

Dated: November 30, 2022

  
KENDALL J. NEWMAN  
UNITED STATES MAGISTRATE JUDGE

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NOTICE OF AMENDMENT

Plaintiff hereby submits the following document in compliance with the court's order  
filed \_\_\_\_\_.

Amended Complaint

DATED: \_\_\_\_\_

\_\_\_\_\_  
Plaintiff